

IC 31-27-3

Chapter 3. Regulation of Child Caring Institutions

IC 31-27-3-1

License required for operation

31-27-3-1 Sec. 1. (a) A person may not operate a child caring institution without a license issued under this article.

(b) The state or a political subdivision of the state may not operate a child caring institution or receive children for placement in a child caring institution without a license issued under this article.

(c) A person may not operate a child caring institution if:

- (1) the number of children maintained on the premises at any one (1) time is greater than the number authorized by the license; or
- (2) the children are maintained in a building or place not designated by the license.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-2

Conditions for issuance of license

31-27-3-2 Sec. 2. (a) A license may be issued only if the child caring institution is in substantial compliance with food, health, safety, and sanitation standards under rules adopted by the department under IC 31-27-2-4 or in accordance with a variance or waiver approved by the department under IC 31-27-2-8.

(b) A license may be issued only if the child caring institution is in compliance with the fire and life safety rules as determined by the state fire marshal under rules adopted by the department under IC 31-27-2-4 or in accordance with a variance or waiver approved by the department under IC 31-27-2-8.

(c) The department may issue a waiver or variance regarding a determination by the state fire marshal under subsection (b).

(d) Except as provided in subsection (e), the department may not issue a license under this chapter unless the child caring institution is staffed by, when children are being cared for, at least one (1) child care provider who is annually certified in a program on pediatric cardiopulmonary resuscitation and pediatric airway obstruction under the American Heart Association's Basic Life Support Course D or any other comparable course approved by the department.

(e) The requirement under subsection (d) does not apply to a child caring institution that only serves children who are at least thirteen (13) years of age and less than twenty-one (21) years of age. However, a child caring institution that only serves children who are at least thirteen (13) years of age and less than twenty-one (21) years of age must have on duty, when children are being cared for, at least one (1) child care provider who is annually certified in a program on cardiopulmonary resuscitation as required by the department.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-3

Applying for license

31-27-3-3 Sec. 3. (a) An applicant must apply for a child caring institution license on forms provided by the department.

(b) An applicant must submit the required information as part of the application.

(c) The applicant must submit with the application a statement attesting the following:

(1) That the applicant has not been convicted of:

(A) a felony; or

(B) a misdemeanor relating to the health and safety of children.

(2) That the applicant has not been charged with:

(A) a felony; or

(B) a misdemeanor relating to the health and safety of children;

during the pendency of the application.

(d) An applicant shall:

(1) conduct a criminal history check of:

(A) each individual who is an applicant; and

(B) the director or manager of a facility where children will be placed; and

(2) submit to the department the result of each criminal history check conducted under this subsection.

(e) The applicant shall do the following:

(1) Conduct a criminal history check of the applicant's:

(A) employees; and

(B) volunteers;

who have or will have direct contact, on a regular and continuing basis, with children who are or will be under the direct supervision of the applicant.

(2) Maintain records of each criminal history check.

(f) An applicant is required to conduct a criminal history check required under subsection (e)(1) only one (1) time.

(g) The department shall, at the applicant's request, inform the applicant whether the department has or does not have a record of the person who is the subject of a criminal history background check and if the department has identified the person as an alleged perpetrator of abuse or neglect. The department may not provide to the applicant any details or personally identifying information contained in any child protective services investigation report.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-4**Child caring institution established by county; operation**

31-27-3-4 Sec. 4. (a) A county may establish a child caring institution. The child caring institution may be operated by:

(1) the county; or

(2) a public or private agency under contract with the county;

and must be operated under the rules adopted by the director under this article.

(b) This section does not affect the following:

- (1) IC 31-31-1-1 or IC 31-40, requiring the county fiscal body to appropriate sufficient money to pay for services ordered by the juvenile court.
- (2) IC 31-31-8, authorizing the juvenile court to establish detention and shelter care facilities.
- (3) IC 12-13-5 and IC 12-19-1, requiring the division of family resources, the office, and the county departments to provide care and treatment for delinquent children and children in need of services.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-5

Grounds for denial of license applications

31-27-3-5 Sec. 5. (a) The following constitute sufficient grounds for a denial of a license application:

(1) A determination by the department of child abuse or neglect by:

- (A) the applicant;
- (B) an employee of the applicant who has direct contact, on a regular and continuous basis, with children who are under the direct supervision of the applicant; or
- (C) a volunteer of the applicant who has direct contact, on a regular and continuous basis, with children who are under the direct supervision of the applicant.

(2) A criminal conviction of the applicant, an employee of the applicant who has direct contact, on a regular and continuous basis, with children who are under the direct supervision of the applicant, or a volunteer of the applicant who has direct contact, on a regular and continuous basis, with children who are under the direct supervision of the applicant, of:

- (A) a felony; or
- (B) a misdemeanor related to the health and safety of a child.

(3) A determination by the department that the applicant made false statements in the applicant's application for licensure.

(4) A determination by the department that the applicant made false statements in the records required by the department.

(b) Notwithstanding subsection (a)(2), if:

- (1) a license application is denied due to a criminal conviction of an employee or a volunteer of the applicant; and
- (2) the department determines that the employee or volunteer has been dismissed by the applicant;

the criminal conviction of the former employee or former volunteer does not require denial of a license application.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-6

Incomplete applications

31-27-3-6 Sec. 6. The department may not act on an incomplete application. The department shall return an incomplete application

with a notation concerning omissions. The return of an incomplete application is without prejudice.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-7

Investigation of applicants

31-27-3-7 Sec. 7. The department shall investigate a person seeking licensure to determine whether the person is in compliance with this article and the rules adopted under this article. The investigation shall be conducted at a reasonable time and in a reasonable manner, in announced or unannounced visits. Activities may include onsite inspections, record reading, observation, and interviewing. The department may require that evidence of compliance with the rules be presented in a form and manner specified in the rules.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-8

Issuance of license

31-27-3-8 Sec. 8. The department shall issue a license to a person who meets all of the license requirements when an investigation shows the applicant to be in compliance under this article.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-9

Eligibility for waivers and variances

31-27-3-9 Sec. 9. A child caring institution may be eligible to receive a waiver or variance from the requirements of this chapter by complying with IC 31-27-2-8.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-10

Waiver of maximum stay for child

31-27-3-10 Sec. 10. (a) The department may grant a waiver of the sixty (60) day maximum stay for a child if the child caring institution licensed as a shelter care facility applies for the waiver before the expiration of the sixty (60) day period.

(b) The child caring institution shall document in the request for a waiver that the waiver is in the best interest of the child.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-11

Denial of license

31-27-3-11 Sec. 11. (a) The department shall deny a license when an applicant fails to meet the requirements for a license.

(b) The department shall send written notice by certified mail that the application has been denied and give the reasons for the denial.

(c) An administrative hearing concerning the denial of a license shall be provided upon written request by the applicant. The request must be made not more than thirty (30) days after receiving the

written notice under subsection (b).

(d) An administrative hearing shall be held not more than sixty (60) days after receiving the written request.

(e) An administrative hearing shall be held in accordance with IC 4-21.5-3.

(f) The department shall issue a decision not more than sixty (60) days after the conclusion of a hearing.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-12

Investigation of unlicensed premises

31-27-3-12 Sec. 12. The department is responsible for investigating any premises that the department has reason to believe are being used for child care without a license in circumstances where a license is required.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-13

Duration of license; limitations; renewal; public display

31-27-3-13 Sec. 13. (a) A license for a child caring institution expires four (4) years after the date of issuance, unless the license is revoked, modified to a probationary status, or voluntarily returned.

(b) A license issued under this chapter:

(1) is not transferable;

(2) applies only to the licensee and the location stated in the application; and

(3) remains the property of the department.

(c) When a licensee submits a timely application for renewal, the current license remains in effect until the department issues a license or denies the application.

(d) A current license must be publicly displayed.

As added by P.L.145-2006, SEC.273. Amended by P.L.146-2006, SEC.27.

IC 31-27-3-14

Probationary status; duration; expiration; extension

31-27-3-14 Sec. 14. (a) The department may place a licensee on probationary status if the licensee is temporarily unable to comply with a rule and if:

(1) the noncompliance does not present an immediate threat to the health and well-being of the children;

(2) the licensee files a plan with the department, state department of health, or the state fire marshal to correct the areas of noncompliance within the probationary period; and

(3) the department, state department of health, or state fire marshal approves the plan.

(b) A probationary status period is for not more than six (6) months. However, the department may extend a probationary status period for one (1) additional period of six (6) months.

(c) At the expiration of a probationary status period, the

department shall:

- (1) reactivate the license to the end of the original term of the license;
- (2) extend the probationary status period as permitted under subsection (b); or
- (3) revoke the license.

As added by P.L.145-2006, SEC.273. Amended by P.L.146-2006, SEC.28.

IC 31-27-3-15

Inspections

31-27-3-15 Sec. 15. The department and the state fire marshal shall do the following:

- (1) Make annual onsite inspections.
- (2) Keep written records of their monitoring activities and inspections.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-16

Cooperation by licensees

31-27-3-16 Sec. 16. A licensee shall cooperate with the department and the state fire marshal in carrying out the activities required by section 15 of this chapter, including permitting the department and the state fire marshal to conduct announced or unannounced inspections.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-17

Sprinkler system requirements

31-27-3-17 Sec. 17. The fire prevention and building safety commission may not adopt rules requiring the installation of a sprinkler system in a living unit of a licensed child caring institution in which fewer than sixteen (16) children reside, each of whom is:

- (1) ambulatory; and
- (2) at least six (6) years of age.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-18

Records

31-27-3-18 Sec. 18. (a) A licensee shall keep records regarding each child in the control and care of the licensee as the department requires and shall report to the department upon request the facts the department requires with reference to children.

(b) The department shall keep records regarding children and facts learned about children and the children's parents or relatives confidential.

(c) The following have access to records regarding children and facts learned about children:

- (1) A state agency involved in the licensing of the child caring institution.

- (2) A legally mandated child protection agency.
- (3) A law enforcement agency.
- (4) An agency having the legal responsibility to care for a child placed at the child caring institution.
- (5) The parent, guardian, or custodian of the child at the child caring institution.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-19

Notice of enforcement actions; informal meetings

31-27-3-19 Sec. 19. Except as provided in section 29 of this chapter, the department shall give a licensee thirty (30) days written notice by certified mail of an enforcement action. The licensee shall also be provided with the opportunity for an informal meeting with the department. The licensee must request the meeting not more than ten (10) working days after receipt of the certified notice.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-20

Administrative hearings

31-27-3-20 Sec. 20. (a) An administrative hearing concerning the decision of the department to impose a sanction under this chapter shall be provided upon a written request by the child caring institution. The request must be made not more than thirty (30) days after receiving notice under section 19 of this chapter. The written request must be made separately from an informal meeting request made under section 19 of this chapter.

(b) An administrative hearing shall be held not more than sixty (60) days after receiving the written request.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-21

Procedure for administrative hearings

31-27-3-21 Sec. 21. A hearing requested under section 20 of this chapter shall be held in accordance with IC 4-21.5-3.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-22

Issuance of decisions

31-27-3-22 Sec. 22. The department shall issue a decision not more than sixty (60) days after the conclusion of a hearing.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-23 Repealed

(Repealed by P.L.146-2006, SEC.60.)

IC 31-27-3-24 Repealed

(Repealed by P.L.146-2006, SEC.60.)

IC 31-27-3-25 Repealed

(Repealed by P.L.146-2006, SEC.60.)

IC 31-27-3-26

Cessation of operation upon revocation of license

31-27-3-26 Sec. 26. A child caring institution shall cease operation when the license of the child caring institution is revoked.
As added by P.L.145-2006, SEC.273.

IC 31-27-3-27

Notice

31-27-3-27 Sec. 27. (a) After a license is revoked, the department shall notify in writing each person responsible for each child in care to ensure that those children are removed.

(b) The written notice shall be sent to the last known address of the person responsible for the child in care and shall state that the license of the child caring institution has been revoked.

As added by P.L.145-2006, SEC.273. Amended by P.L.146-2006, SEC.29.

IC 31-27-3-28

Judicial review

31-27-3-28 Sec. 28. A final decision of the department made after a hearing is subject to judicial review under IC 4-21.5-5.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-29

Investigations of noncompliance; injunctions; corrective action plans; removal of children; informal meetings

31-27-3-29 Sec. 29. (a) The department shall investigate a report of a licensed child caring institution's noncompliance with this article or the rules adopted under this article if there is reasonable cause to believe that a licensee's noncompliance with this article and rules adopted under this article creates an imminent danger of serious bodily injury to a child or an imminent danger to the health of a child and shall report the department's findings to the attorney general and to the county office and the prosecuting attorney in the county where the institution is located.

(b) The attorney general or the department may do the following:

(1) Seek the issuance of a search warrant to assist in the investigation.

(2) File an action for injunctive relief to stop the operation of a child caring institution if there is reasonable cause to believe that a licensee's noncompliance with this article or the rules adopted under this article creates an imminent danger of serious bodily injury to a child or an imminent danger to the health of a child.

(c) The department may require a plan of corrective action for emergency protection of the children described in subsection (b).

(d) The department may provide for the removal of children from child caring institutions described in subsection (b).

(e) An opportunity for an informal meeting with the department shall be available after the injunctive relief is ordered.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-30

Expiration of injunctions for creation of imminent danger

31-27-3-30 Sec. 30. A court order granted under section 29(b)(2) of this chapter expires upon the later of the following:

- (1) Sixty (60) days after the order is issued.
- (2) When a final department decision is issued under sections 20 through 22 of this chapter if notice of an enforcement action is issued under section 19 of this chapter.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-31

Grounds for revocation of license

31-27-3-31 Sec. 31. The following constitute sufficient grounds for revocation of a license:

- (1) A determination by the department of child abuse or neglect by:
 - (A) the licensee;
 - (B) an employee of the licensee who has direct contact, on a regular and continuous basis, with children who are under the direct supervision of the licensee; or
 - (C) a volunteer of the licensee who has direct contact, on a regular and continuous basis, with children who are under the direct supervision of the licensee.
- (2) A criminal conviction of the licensee, an employee of the licensee who has direct contact, on a regular and continuous basis, with children who are under the direct supervision of the licensee, or a volunteer of the licensee who has direct contact, on a regular and continuous basis, with children who are under the direct supervision of the licensee, of any of the following:
 - (A) A felony.
 - (B) A misdemeanor related to the health or safety of a child.
- (3) A determination by the department that the licensee made false statements in the licensee's application for licensure.
- (4) A determination by the department that the licensee made false statements in the records required by the department.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-32

Compliance with rules; disciplinary sanctions; revocation of license

31-27-3-32 Sec. 32. (a) A licensee shall operate a child caring institution in compliance with the rules established under this article and is subject to the disciplinary sanctions under subsection (b) if the department finds that the licensee has violated this article or a rule

adopted under this article.

(b) After complying with the procedural provisions in sections 19 through 22 of this chapter, the department may revoke the license when the department finds that a licensee has committed a violation under subsection (a).

As added by P.L.145-2006, SEC.273. Amended by P.L.146-2006, SEC.30.

IC 31-27-3-33

Investigations of unlicensed operation; injunctions; civil penalties

31-27-3-33 Sec. 33. (a) The department shall investigate a report of an unlicensed child caring institution and report the department's findings to the attorney general and to the county office and the prosecuting attorney in the county where the institution is located.

(b) The attorney general or the department may do the following:

(1) Seek the issuance of a search warrant to assist in the investigation.

(2) File an action for injunctive relief to stop the operation of a child caring institution if there is reasonable cause to believe that the child caring institution is operating without a license required under this article.

(3) Seek in a civil action a civil penalty not to exceed one hundred dollars (\$100) a day for each day a child caring institution is operating without a license required under this article.

(c) An opportunity for an informal meeting with the department shall be available after the injunctive relief is ordered.

(d) The civil penalties collected under this section shall be deposited in the department of child services child care fund established by IC 31-25-1-16.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-34

Expiration of injunction for unlicensed operation

31-27-3-34 Sec. 34. A court order granted under section 33(b)(2) of this chapter expires when the child caring institution is issued a license.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-35

Violations of chapter

31-27-3-35 Sec. 35. A person who knowingly or intentionally violates this chapter commits a Class B misdemeanor.

As added by P.L.145-2006, SEC.273.